

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

FILED

2008 DEC 23 P 3: 28

CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY DEPUTY

**KINETIC CONCEPTS, INC.,
KCI LICENSING, INC., KCI USA, INC.
and WAKE FOREST UNIVERSITY
HEALTH SCIENCES**

Plaintiffs,

VS.

**CIVIL ACTION NO.
SA-08-CV-00087-WRF**

MEDELA AG and MEDELA, INC.

Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT

Plaintiffs, Kinetic Concepts, Inc., KCI Licensing, Inc., and KCI USA, Inc., KCI Medical Resources, Medical Holdings Limited, and KCI Manufacturing (collectively, “KCI”), and Wake Forest University Health Sciences (individually, “Wake Forest” and collectively with KCI, “Plaintiffs”) file this First Amended Complaint for damages and injunctive relief against Medela AG and Medela, Inc. (collectively, “Defendants” or “Medela”). In support of their First Amended Complaint, Plaintiffs allege as follows:

I. PARTIES

1. Plaintiff Kinetic Concepts, Inc. is a corporation organized under the laws of the State of Texas having its principal place of business at 8023 Vantage Drive, San Antonio, Texas 78230. Kinetic Concepts, Inc. is a global medical technology company with leadership positions in advanced wound care and therapeutic surfaces.

2. Plaintiff KCI USA, Inc. is a corporation organized under the laws of the State of Delaware having its principal place of business at 8023 Vantage Drive, San Antonio, Texas 78230. KCI USA, Inc. is a wholly owned subsidiary of Kinetic Concepts, Inc.

3. Plaintiff KCI Licensing, Inc. is a corporation organized under the laws of the State of Delaware having its principal place of business at 8023 Vantage Drive, San Antonio, Texas 78230. KCI Licensing, Inc. is a wholly owned subsidiary of Kinetic Concepts, Inc.

4. Plaintiff KCI Medical Resources is a company governed by the laws of Ireland having its principal place of business at Zephyr House, Mary Street, P.O. Box 709 GT, Grand Cayman, Cayman Islands.

5. Plaintiff Medical Holdings Limited is a company governed by the laws of Malta having its principal place of business at 171 Old Bakery Street, Valleta VLT 1455, Malta.

6. Plaintiff KCI Manufacturing is a company governed by the laws of Ireland having its principal place of business at 39/40 Upper Mount Street, Dublin 2, Ireland.

7. Plaintiff Wake Forest is a non-profit corporation organized under the laws of the State of North Carolina having its principal place of business at Medical Center Boulevard, Winston-Salem, North Carolina 27157-1023. Wake Forest is a wholly-controlled subsidiary of Wake Forest University.

8. Defendant Medela AG is a Swiss company having its principal place of business at Lattchstrasse 4, 6341 Baar/Switzerland. Medela AG may be served pursuant to the Hague Convention by forwarding a copy of this Complaint and Summons to the receiving authority location in Switzerland.

9. Defendant Medela, Inc. is a Delaware corporation with its principal place of business at 1101 Corporate Dr., McHenry, Illinois 60050. Medela Inc. may be served with

process by serving its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. Defendants Medela AG and Medela, Inc. are wholly owned subsidiaries of Medela Holding AG, such that Medela AG and Medela, Inc. are affiliates of one another.

II. JURISDICTION AND VENUE

10. This case arises under the federal patent laws, 35 U.S.C. § 1 *et seq.*, and therefore this Court has jurisdiction under 28 U.S.C. §§ 1331, 1338(a).

11. This Court has personal jurisdiction over the Defendants. Defendants regularly conduct business in this District and have committed acts of infringement within the state of Texas and within this judicial district.

12. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b) because the acts and transactions constituting the violations alleged herein, occurred in part in this judicial district and because the Defendants transact business in this judicial district. Venue is also proper in this district under 28 U.S.C. § 1391(c) because Defendants are corporations that are subject to personal jurisdiction in this district.

III. BACKGROUND

13. KCI is a leader in the development, manufacture and distribution of specialty therapeutic medical devices.

14. Several of KCI's product lines feature products that provide wound care benefits for patients. KCI's wound care product lines include variations of the Vacuum Assisted Closure[®] System, also known as the "V.A.C.[®] System" (hereinafter, "V.A.C. System").

15. The commercialization of the V.A.C. System dramatically revolutionized wound care by providing effective treatment for difficult-to-treat and chronic wounds.

16. The V.A.C. System incorporates certain novel features and characteristics invented by researchers working on behalf of Wake Forest in Winston-Salem, North Carolina. In recognition of the technological advances made by these researchers, the U.S. Patent and Trademark Office issued U.S. Patent Nos. 7,216,651 ("the '651 patent") and the 7,198,046 ("the '046 patent"), which are assigned to Wake Forest.

17. The '651 patent, entitled "Wound Treatment Employing Reduced Pressure," was duly and lawfully issued on May 15, 2007, and is extant and enforceable until its expiration date of November 14, 2011. Wake Forest is the true and record owner of the '651 patent.

18. The '046 patent, entitled "Method of Treating Tissue Damage and Apparatus for Same," was duly and lawfully issued on April 3, 2007, and is extant and enforceable until its expiration date of November 14, 2011. Wake Forest is the true and record owner of the '046 patent.

19. Kinetic Concepts, Inc. is the exclusive licensee of the '651 and '046 patents, by virtue of a written license agreement effective October 6, 1993 with Wake Forest. Pursuant to that license agreement, KCI has the exclusive worldwide right to make, have made, use, lease and sell products incorporating the inventions covered by the '651 and '046 patents. At all times relevant to this complaint, KCI has complied with the marking requirement of 35 U.S.C. § 287.

20. Medela manufactures the "Invia Healing System," which combines a medical vacuum pump with specialized dressings and which claims to promote wound healing. Medela began marketing, selling, and/or offering for sale its Invia Healing System for this purpose at least as early as March 2007.

IV. CAUSE OF ACTION: FEDERAL PATENT INFRINGEMENT

21. Paragraphs 1 through 20 are repeated and realleged as if fully set forth herein. The following allegations are made on information and belief.

22. Defendants' Invia Healing System, in whole or in part, incorporates the invention of the '651 and '046 patents exclusively licensed to KCI. Manufacture, sale, offers for sale, and use of the Invia Healing System infringes the '651 and '046 patents either literally or under the doctrine of equivalents.

23. Defendants are knowingly and directly infringing or inducing infringement of the '651 and '046 patents within this District and elsewhere, without leave or license from Plaintiffs, all to Plaintiffs' substantial damage. Additionally, Defendants are contributorily infringing the '651 and '046 patents within this District and elsewhere, without leave or license from Plaintiffs, all to Plaintiffs' substantial damage. Defendants will continue to do so unless enjoined from it by this Court.

24. Said direct or contributory infringement of the '651 and '046 patents, or the active inducement of others to infringe the '651 and '046 patents, is damaging Plaintiffs, and Plaintiffs will suffer additional and irreparable damage unless this Court enjoins Defendants from continuing to directly or contributorily infringe or induce others to infringe the '651 and '046 patents.

25. Unless enjoined by this Court, Defendants will continue to infringe or contributorily infringe or induce others to infringe the '651 and '046 patents, making this an exceptional case and justifying the award of attorneys' fees pursuant to 35 U.S.C. § 285.

V. JURY DEMAND

Plaintiffs hereby request a **trial by jury**.

VI. PRAYER

For these reasons, Plaintiffs ask for judgment against Defendants for the following:

- A. Defendants, their officers, agents, servants, employees, successors, assigns and attorneys, and all persons in active concert or participation with any of them, be preliminarily and permanently enjoined from any further acts of infringement or contributory infringement or inducing others to infringe U.S. Patent Nos. 7,216,651 and 7,198,046.
- B. Plaintiffs recover all damages they have sustained as a result of Defendants' infringement, but not less than a reasonable royalty, together with interest and costs under 35 U.S.C. § 284.
- C. The Court declare that this is an exceptional case pursuant to 35 U.S.C. § 285 and award Plaintiffs their reasonable attorney fees.
- D. Plaintiffs recover their costs and expenses for prosecuting this action and prejudgment and postjudgment interest.
- E. Plaintiffs recover all other relief the court deems appropriate.

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD L.L.P.

300 Convent Street, Suite 1500

San Antonio, Texas 78205

Telephone: 210.281.7000

Fax: 210.224.2035



R. LAURENCE MACON

State Bar No. 12787500

lmacon@akingump.com

KAREN K. GULDE

State Bar No. 08612150

kgulde@akingump.com

DONALD R. DUNNER

DON O. BURLEY

FINNEGAN, HENDERSON, FARABOW,

GARRETT & DUNNER, L.L.P.

901 New York Avenue, NW

Washington, DC 20001

Telephone: 202.408.4000

Fax: 202.408.4400

TINA HULSE

FINNEGAN, HENDERSON, FARABOW,

GARRETT & DUNNER, L.L.P.

3300 Hillview Avenue

Palo Alto, CA 94304

Telephone: 650.849.6600

Fax: 650.949.6666

ATTORNEYS FOR PLAINTIFFS

KINETIC CONCEPTS, INC., KCI LICENSING, INC.,

KCI USA, INC., KCI MEDICAL RESOURCES, MEDICAL

HOLDINGS LIMITED, KCI MANUFACTURING, AND

WAKE FOREST UNIVERSITY HEALTH SCIENCES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via e-copy on the 23rd day of December, 2008 to:

Scott F. Partridge
scott.partridge@bakerbotts.com
Elizabeth L. Durham
liz.durham@bakerbotts.com
Baker Botts, L.L.P.
One Shell Plaza
910 Louisiana
Houston, Texas 77002

Kevin M. Sadler
kevin.sadler@bakerbotts.com
Scott D. Powers
scott.powers@bakerbotts.com
Baker Botts, L.L.P.
98 San Jacinto Blvd., Suite 1500
1500 San Jacinto Center
Austin, Texas 78701

**ATTORNEYS FOR
MEDELA AG AND MEDELA, INC.**



R. LAURENCE MACON